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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

DESIGN COLLECTION, INC.,

Plaintiff and Appellant,

v.

KORCHINA LOGISTICS USA,
INC.,

Defendant and
Respondent.

B287336

(Los Angeles County
Super. Ct. No. BC588391)

APPEAL from a judgment of the Superior Court of Los Angeles County. Mel Red Recana, Judge. Reversed with directions.

Law Offices of Nico N. Tabibi, Nico N. Tabibi; Greines, Martin, Stein & Richland and Marc J. Poster for Plaintiff and Appellant.

Law Offices of Yohan Lee, Chong H. Roh; Law Offices of Justin J. Shrenger and Justin J. Shrenger for Defendant and Respondent.

Appellant Design Collection, Inc. and respondent Korchina Logistics USA, Inc. (Korchina) entered a settlement agreement related to a lawsuit Korchina had filed against Design Collection. Although it is undisputed Design Collection upheld its part of the bargain (by paying Korchina \$100,000), Design Collection filed the instant lawsuit claiming in part that Korchina failed to keep its end of the bargain and indeed may have entered into the settlement agreement without the intent to perform its obligations under it.

After a bench trial, the trial court concluded Design Collection failed to show Korchina breached the agreement, failed to show damages resulting from any alleged breach, and failed to show Korchina did not intend to keep its promises under the settlement agreement. As discussed below, we conclude the trial court erred and the undisputed evidence leads inescapably to the conclusions not only that Korchina breached the settlement agreement, but that Design Collection suffered damages as a result. Because of these conclusions, we reverse and remand the matter with directions.

BACKGROUND

1. Earlier Litigation

Appellant Design Collection is “in the business of merchandising, producing, and selling” fabric and garments in the United States. Simon Barlava is Design Collection’s president. Design Collection sold material to and bought material from third party UUS Garments, a manufacturing factory in Vietnam. Chris Pham owned UUS Garments. In addition to UUS Garments, Pham and his wife conducted business through a number of different entities. Because the

parties have done so, and for consistency, we refer to these nonparties collectively as UUS and its Associates.

Respondent Korchina is a freight forwarder. Freight forwarders like Korchina facilitate the arrival and distribution of international goods to their ultimate destination inside the country. Korchina acted as freight forwarder for Design Collection.

a. Design Collection's two lawsuits against UUS Garments

In July 2012, Design Collection sued UUS Garments, alleging UUS Garments not only failed to pay for fabric it had purchased from Design Collection but also had shipped nonconforming garments to Design Collection. Design Collection sought \$789,280.12 in damages. Approximately eight months later, in March 2013, Design Collection sued UUS and its Associates, alleging the various UUS Garments entities made fraudulent transfers to avoid payment of UUS Garments's debts to Design Collection.¹ We refer to these two lawsuits as the UUS Garments cases.

In July or August 2014, Design Collection settled the UUS Garments cases for more than \$800,000. However, at the time of trial in the instant action, counsel for Design Collection stated the trial court presiding over the UUS Garments cases had not approved the settlement or entered judgment there, but instead had set the cases for trial. Barlava testified at trial Design Collection had received only \$60,000 from UUS and its

¹ Although the details of this second lawsuit are not in the record on appeal, Korchina does not dispute Design Collection's characterization of it.

Associates, and Design Collection had been unable to collect more.

b. Korchina's lawsuit against Design Collection

In September 2012, Korchina sued Design Collection, alleging Design Collection was the guarantor of certain debts UUS Garments owed Korchina. As a result, Design Collection tendered more than \$175,000 to the Los Angeles County Sheriff to be held pending resolution of the case.

In February 2014, Korchina settled its dispute with Design Collection. That settlement agreement is at the center of the instant case and is discussed in detail below.

c. Korchina's lawsuit against UUS Garments

In February 2014, Korchina sued UUS Garments for unpaid debts. In June 2015, Korchina settled with some of the defendants in that case.

2. The Agreement

In February 2014, Design Collection and Korchina executed a settlement agreement (agreement) to resolve Korchina's lawsuit against Design Collection.

Design Collection's part of the bargain was its obligation and agreement to pay Korchina a total of \$100,000—\$80,000 of which would come from the funds held by the sheriff and the remaining \$20,000 would come from Design Collection directly. It is undisputed that Design Collection satisfied its part of the bargain and Korchina received the entire \$100,000.

In exchange for the \$100,000 and as a "material part of the consideration" of the agreement, Korchina agreed "to fully and truthfully cooperate with [Design Collection] in its prosecution of [its] claims against [UUS and its Associates]." In the recitals to the agreement, which were specifically incorporated into the

agreement, Korchina represented it had “what is believed to be useful information to help [Design Collection] with the prosecution of its two lawsuits against UUS and its Associates.” Korchina “agreed to deliver in writing, to [Design Collection] all information in connection with (i) assets of and/or information to trace/lead to such assets; (ii) manner of operation/conspiracy between UUS and its Associates (i.e. including but not limited to the different layers of working to hide from [Design Collection];) (iii) [Korchina]’s filed court claims against the same; (iv) provide documents in supports of the forgoing [*sic*]; (v) and within reason and with reasonable prior notice, appearance at any trial, hearing or deposition to testify and/or sign declarations to such effect.” Consistent with the agreement’s language, Barlava testified at trial that Korchina’s cooperation in this respect was paramount to Design Collection’s decision to settle Korchina’s lawsuit, and Design Collection would not have settled the case if it did not believe Korchina would provide the information and documents it represented it possessed.

The agreement defined Korchina’s “Cooperation” as: “within 10 days of obtaining a court order to release and payout \$80,000 of the Sheriff’s Funds to [Korchina], provide [Design Collection] in writing and with supported [*sic*] documents — to the extent such documents exist and [are] known to [Korchina]: [¶] a. names of all [UUS] Associates; [¶] b. Assets of and/or information leading to assets of UUS and [its] Associates including but not limited to order, shipments, customers, suppliers, places of business, payments, cargo/shipment information, bills of lading, customs papers, and any and all like information; [¶] c. Manner in which UUS and [its] Associates have developed and/or are working with each other and/or all like

information; [¶] d. E-mails, letters, faxes, invoices, packing slips, commercial invoices as well as summary of the same; [¶] e. All contact information about individuals who have or may have information about any of the forgoing [*sic*]; and [¶] f. All pending lawsuits or claims, together with supporting documents to such claims and/or lawsuits, against UUS and [its] Associates, which documents are to be delivered concurrent with execution of this Agreement.” Korchina’s “Cooperation” also included “within reason and subject to reasonable notice, [to] provide Declarations in connection with the forgoing [*sic*] and/or appear at any hearing, trial or deposition to testify about the forgoing [*sic*].”

The parties agreed that “the usefulness of [Korchina]’s support is in no way guaranteed nor warranted.”

The agreement also addressed attorney fees, stating, “Each Party shall bear its own attorneys’ fees and costs, except in the event of default, in which case the non-defaulting Party shall be entitled to attorneys’ fees[,] costs, and interest from the defaulting Party.”

A few weeks after signing the agreement, the parties executed a written amendment to the agreement stating Korchina would dismiss its lawsuit against Design Collection with prejudice.

3. The Instant Lawsuit

On April 1, 2014, the trial court ordered the Sheriff to release the agreed upon \$80,000 to Korchina, thus triggering the 10-day time period for Korchina to provide Design Collection with the agreed upon documents. Design Collection paid the remaining \$20,000 to Korchina, and Korchina dismissed its lawsuit against Design Collection with prejudice.

However, Korchina did not provide any of the contemplated information to Design Collection within the required 10-day time frame. Counsel for Design Collection spent months communicating with Korchina's counsel in an attempt to obtain the information from Korchina. In late April, after the agreement's required time frame had expired, counsel for Design Collection collected 19 invoices from Korchina's counsel's office. Design Collection stated the invoices were not relevant.

After its informal attempts to obtain the agreed-upon information were unsuccessful, Design Collection declared Korchina in default under the agreement and issued a formal deposition subpoena for Korchina's person most knowledgeable. On the day of the noticed deposition, six months after execution of the agreement, Korchina's person most knowledgeable, Jake Park, produced a thumb drive containing thousands of documents spanning multiple years, which included invoices, bills of lading, and similar documents. Park testified he was not familiar with the agreement and did not review all of the documents on the thumb drive. Nonetheless, Park stated he included on the thumb drive all the documents Korchina possessed relevant to UUS and its Associates and he did so "by scanning the shipping documents and a *[sic]* e-mail search." Barlava testified at trial he reviewed all the documents on the thumb drive, which process he described as "looking for a needle in the haystack." In Barlava's opinion the documents were not helpful and did not constitute the type of information contemplated by the agreement.

a. Complaint

Design Collection sued Korchina for breach of contract, promise without intent to perform, conspiracy to defraud, fraudulent transfers, injunctive relief, unjust enrichment, and

rescission. Among other relief, Design Collection sought compensatory damages of \$779,280.12 (the amount Design Collection sought in its July 2012 lawsuit against UUS Garments), \$100,000 (the amount Design Collection paid Korchina in accordance with the agreement), and attorney fees.

The trial court sustained Korchina's demurrer to the injunctive relief and unjust enrichment causes of action.

b. Bench Trial

As to Design Collection's remaining causes of action, the trial court conducted a bench trial in two phases. At the conclusion of the first phase, the court ruled in favor of Korchina on the conspiracy, fraudulent transfers, unjust enrichment, injunctive relief, and rescission causes of action. In the second phase, the trial court heard further evidence on Design Collection's remaining causes of action—breach of contract and promise without intent to perform.

Because the relevant facts are mostly undisputed and reflect the facts as stated above, we briefly summarize the pertinent testimony. Design Collection's president, Barlava, testified. He stated Design Collection entered the agreement in order to obtain information as to UUS and its Associates and, in particular, how they operated to avoid debts owed to Design Collection. Design Collection planned to use that information in the UUS Garments cases. Barlava stated Design Collection would not have settled with Korchina if Korchina did not possess and would not provide the specified information within the specified time frame. Barlava stated that, although Design Collection settled the UUS Garments cases, Design Collection had collected only \$60,000 and the trial court in those cases had not approved the settlement but instead had set the cases for

trial. Barlava believed Design Collection could have collected much more of the UUS Garments debts had Korchina provided the promised information within the specified time frame.

Three other individuals, including Park, testified. Other than Park's testimony that the thumb drive Korchina provided to Design Collection at the deposition included all relevant documents, the remaining witnesses did not dispute the key facts as summarized above.

c. Statement of Decision and Judgment

In October 2017, the trial court issued a tentative decision in favor of Korchina and ordered Korchina to prepare a proposed statement of decision.

The proposed statement of decision first addressed the facts of the case. It stated that according to the agreement, Design Collection was required to pay Korchina \$100,000 and, in an effort to help Design Collection collect debts owed by UUS Garments, Korchina was required to provide information it had regarding UUS and its Associates to Design Collection. The proposed statement of decision also noted the agreement specified Korchina was not responsible for the usefulness of the support it was to provide. The proposed statement of decision found it was "undisputed that [Korchina] produced thousands of documents to Design Collection, and to Korchina's knowledge, produced all documents Korchina had. Korchina also appeared at depositions pursuant to the [agreement]." In addition, the proposed statement of decision claimed Design Collection "resolved all matters with" UUS and its Associates through a settlement agreement that "actually called for Design Collection to receive more than the principal balance Design Collection alleged was owed."

As to legal conclusions, the proposed statement of decision held Design Collection failed to show Korchina either breached the agreement or entered the agreement without the intent to perform, or that Design Collection was harmed by anything Korchina did or did not do with respect to the agreement. In particular, the proposed statement of decision concluded the evidence showed Korchina “produced thousands of documents to Design Collection and appeared at depositions when noticed by Design Collection. [Design Collection] did nothing more than show that it was not satisfied with the results it achieved in prosecuting UUS.” Referencing Design Collection’s settlement with UUS and its Associates, the proposed statement of decision also held “[n]o evidence was presented that showed that due to [Korchina]’s alleged breach, Design Collection suffered damages at all” and no evidence was presented “of any different result that would have occurred had [Korchina] performed some specific obligation that it failed to perform.” Finally, the proposed statement of decision concluded “Design Collection failed to offer evidence showing any false representation was made by Korchina to Design Collection at the time of the [agreement],” and again citing Design Collection’s settlement agreement with UUS and its Associates, Design Collection “failed to show damages.”

In response to the proposed statement of decision, Design Collection filed detailed objections and requests for clarification. Among other things, Design Collection noted the proposed statement of decision did not address: (i) whether Korchina timely provided information or documents to Design Collection as required by the agreement, (ii) whether Korchina possessed documents specified in the agreement, (iii) what if any documents Korchina provided to Design Collection that satisfied its

obligations under the agreement, (iv) how if at all Korchina cooperated with Design Collection as required by the agreement, (v) Design Collection's alleged damages in attempting to enforce the agreement, and (vi) the financial condition of UUS Garments at the time the agreement was executed.

Design Collection also objected to specific findings and conclusions in the proposed statement of decision. For example, Design Collection objected to the finding that it was undisputed Korchina had produced thousands of documents. Design Collection noted the proposed statement of decision did not address the timing of that production or whether that production included documents contemplated by the agreement. Design Collection objected to the finding that it had "resolved all matters with" UUS and its Associates. Design Collection referenced evidence, including judicially noticed material, that showed Design Collection's claims against UUS and its Associates remained pending. Design Collection also objected to the conclusions that Design Collection failed to show Korchina had breached the agreement or failed to show Korchina had harmed Design Collection in any way. Design Collection objected to the finding that it had failed to provide evidence of how things might have been different had Korchina performed its specific obligations under the agreement. Design Collection pointed to Barlava's testimony on this point.

On December 5, 2017, the trial court issued its final statement of decision, which was identical to the proposed statement of decision submitted by Korchina, save for the correction of one minor typographical error. That same day, the trial court entered judgment in favor of Korchina and awarded

Korchina its costs and attorney fees, plus interest, which amounts were to be determined later.

Design Collection appealed from the judgment.

DISCUSSION

1. Standards of Review

We interpret written settlement agreements—like other written contracts—de novo. (*Winet v. Price* (1992) 4 Cal.App.4th 1159, 1165–1166.)

We review the trial court’s factual findings for substantial evidence. (*Thompson v. Asimos* (2016) 6 Cal.App.5th 970, 981 (*Thompson*).) “Under this deferential standard of review, findings of fact are liberally construed to support the judgment and we consider the evidence in the light most favorable to the prevailing party, drawing all reasonable inferences in support of the findings.” (*Ibid.*)

“When a proper request for a statement of decision has been made, the scope of appellate review may be affected.” (*Thompson, supra*, 6 Cal.App.5th at p. 981.) If a “statement of decision does not resolve a controverted issue or is ambiguous, and the omission or ambiguity was brought to the attention of the trial court, ‘it shall not be inferred on appeal . . . that the trial court decided in favor of the prevailing party as to those facts or on that issue.’” (*Ibid.*)

2. Breach of Contract

“[T]he elements of a cause of action for breach of contract are (1) the existence of the contract, (2) plaintiff’s performance or excuse for nonperformance, (3) defendant’s breach, and (4) the resulting damages to the plaintiff.” (*Oasis West Realty, LLC v. Goldman* (2011) 51 Cal.4th 811, 821.) Here, there is no dispute that the agreement was a contract between Design Collection and

Korchina or that Design Collection performed its obligations under the agreement. Rather, the dispute centers on the third and fourth elements, namely whether Korchina breached the agreement and, if so, whether Design Collection suffered damages as a result.

a. Key Terms of the Agreement

Briefly, we summarize the relevant terms of the agreement. Korchina represented it possessed information it believed would be helpful to Design Collection in litigating the UUS Garments cases. Korchina was required to provide in writing to Design Collection the information Korchina stated it possessed. Among other things, that information included the manner in which UUS and its Associates were hiding assets from Design Collection as well as information concerning the assets of UUS and its Associates. Korchina was required to provide that information within 10 days. Although Korchina did not guarantee the usefulness of the information it stated it possessed, Korchina was required to cooperate and, of course, provide the information to Design Collection.

b. Breach

We conclude the undisputed evidence can only support a finding that Korchina breached the agreement. It is undisputed Korchina did not provide any information to Design Collection within the required time frame. That was a material breach of the agreement. In addition, Korchina did not “cooperate” with Design Collection as it was required to do. Instead, for months Korchina told Design Collection it was gathering the required information and would be sending it to Design Collection. At one point, after the 10-day time period had expired, Korchina made available 19 seemingly random invoices. Only after receiving a

formal deposition subpoena from Design Collection did Korchina provide documents. And even then, it is disputed whether the information provided was what the parties contemplated in the agreement. Korchina's lack of cooperation also was a material breach of the agreement.

Although Design Collection raises these points in its opening brief on appeal and provides specific record citations to support its position, Korchina's response is entirely lacking. In its brief on appeal, Korchina provides no record citations (other than those appearing in large block quotations from Design Collection's opening brief). Instead, Korchina simply states without supporting citation to anything that the judgment is warranted. Korchina makes no true effort to dispute the facts as detailed by Design Collection. And because Design Collection properly requested clarification of the trial court's proposed statement of decision on these issues, we do not infer that the trial court decided in favor of Korchina as to these facts and issues. (*Thompson, supra*, 6 Cal.App.5th at p. 981.) Korchina's argument to the contrary is incorrect.

Thus, we conclude substantial evidence does not support the trial court's finding that Korchina did not breach the agreement.

c. Damages

As noted above, resulting damage is a required element of a breach of contract cause of action. (*Oasis West Realty, LLC v. Goldman, supra*, 51 Cal.4th at p. 821.) Here, the trial court found Design Collection failed to show it was damaged by anything Korchina did or did not do with respect to the agreement. In particular, the trial court relied on Design Collection's settlement with UUS and its Associates, stating

there was no evidence to show “any different result that would have occurred had [Korchina] performed some specific obligation that it failed to perform.” Again, however, we disagree and conclude substantial evidence does not support the trial court’s finding of no damages.

“A plaintiff suing for breach of contract is entitled to recover as damages ‘the amount which will compensate . . . for all the detriment proximately caused thereby, or which, in the ordinary course of things, would be likely to result therefrom.’ (Civ. Code, § 3300.) These damages include: (1) ‘general damages,’ which are damages that ‘flow directly and necessarily from a breach of contract’ [citation], and which include lost profits [citation]; (2) ‘special’ or consequential damages, which are damages that ‘do not arise directly and inevitably’ but which are recoverable to the extent they ‘were either actually foreseen . . . or were “reasonably foreseeable” when the contract was formed’ [citation]; (3) nominal damages [citations]; and, if the contract so provides, (4) attorney’s fees to the prevailing party.” (*Mission Beverage Co. v. Pabst Brewing Co., LLC* (2017) 15 Cal.App.5th 686, 710–711.)

We conclude the undisputed evidence can only support a finding that Design Collection suffered damages as a result of Korchina’s breach of the agreement. First, Design Collection was damaged for the simple reason it paid Korchina \$100,000 but Korchina did not keep its end of the bargain. In other words, Design Collection did not get what it paid for. Although Korchina dismissed its lawsuit against Design Collection, Korchina did not provide in writing within the specified time frame documents it said it possessed, which was an express and material term of the agreement. Second, Design Collection was damaged to the extent

its counsel spent months attempting informally to enforce the agreement by repeatedly requesting the promised information from Korchina, which informal activity was followed by a formal deposition subpoena and deposition. The time and other resources spent over those months were valuable to Design Collection. Third, Design Collection claims that, had Korchina kept its end of the bargain and provided the promised information on time, Design Collection could have recovered more if not all of the outstanding UUS Garments debts. Finally, and at the least, Design Collection would be entitled to nominal damages for Korchina's breach of the agreement. (Civ. Code, § 3360.)

In finding no damages the trial court relied heavily on Design Collection's settlement with UUS and its Associates. We agree with Design Collection, however, and conclude that settlement does not wipe out Design Collection's claim of damages here. First, although it settled with UUS and its Associates, Design Collection stated it collected only \$60,000 from that settlement, and the trial court presiding over those cases refused to enter judgment. Second, Design Collection's settlement with UUS and its Associates did not account for either the \$100,000 Design Collection paid to Korchina in accordance with the agreement here or the value of the resources Design Collection expended unsuccessfully to collect the information Korchina had promised. Finally, according to Design Collection, had it received the promised information from Korchina when promised, Design Collection had a stronger chance of recovering more if not all of the debts UUS Garments owed.

Thus, in light of the undisputed facts before us, we are entirely unpersuaded by Korchina's bald statement that Design

Collection “produced no evidence either of [Korchina’s] failure to perform a specific material provision of the agreement . . . or any instance in which any such failure caused it identifiable damage.”

Finally, Korchina states the litigation privilege protects its own filing of a lawsuit against UUS Garments. We do not address this point because it is irrelevant to this appeal and, in any event, was not raised below.

3. Attorney Fees

In light of our conclusions, the trial court’s award of attorney fees for Korchina must be reversed. Instead, under the terms of the agreement Design Collection is entitled to its attorney fees. As noted above, the agreement expressly provides that, in the event of a default, “the non-defaulting Party shall be entitled to attorneys’ fees[,] costs, and interest from the defaulting party.” Because as we have held above Korchina breached the agreement and Design Collection did not, the agreement dictates Design Collection is entitled to recover its attorney fees, costs, and interest from Korchina.

4. Promissory Fraud

Design Collection does not address its cause of action against Korchina for promise without intent to perform, other than to state the trial court should address the issue on remand. In essence, the trial court rejected Design Collection’s promissory fraud cause of action because the court concluded Korchina did not breach the agreement, but instead had satisfied its obligations under the agreement. As explained above, however, we hold the opposite. Therefore, we agree the trial court must revisit Design Collection’s promissory fraud cause of action against Korchina.

DISPOSITION

The judgment is reversed. The trial court is directed to find Korchina breached the agreement; address and determine Design Collection's breach of contract damages; address and determine Design Collection's promissory fraud cause of action and, if necessary, any resulting damages; and award attorney fees to Design Collection as prevailing party on its breach of contract cause of action, including its attorney fees incurred on appeal. Appellant Design Collection is awarded its costs on appeal.

NOT TO BE PUBLISHED.

LUI, P. J.

We concur:

CHAVEZ, J.

HOFFSTADT, J.